



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No. 6859-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 8 November 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted in the Marine Corps after receiving a waiver for pre-service drug use and began a period of active duty on 15 August 1990. Following a single day of unauthorized absence (UA) in August 1991, you were subject to nonjudicial punishment (NJP), on 16 September 1991, for that violation of Article 86 of the Uniform Code of Military Justice (UCMJ). Following this NJP, you were issued administrative counseling advising you that further misconduct could result in adverse disciplinary or administrative action, to include potential involuntary separation. You then had a second NJP, on 27 April 1992, for violations of the UCMJ to include Article 91, for willfully disobeying the order of a corporal, and Article 128, for assaulting a lance corporal by punching him in the eye.

According to documents located in your military record, on 1 March 1993, you were convicted by the █ for the felony offense of second degree murder and sentenced to

an incarceration term of 24 years. Consequently, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and civilian conviction, and advised of your rights incident to that notification. In your acknowledgment of that notification, you declined further consultation with legal counsel, waived your right to a hearing before an administrative discharge board, and elected not to submit a statement in rebuttal to the proposed separation. In recommending your separation, your chain of command commented that you had no potential for future service, your rehabilitative potential was poor at best or nonexistent, you lacked integrity and had used a stolen telephone calling card, you were unable to perform duties without supervision, you were a proven liberty risk, your conviction was the second shooting-related incident in 1 year and “this is the 2nd time he shot someone,” and that you were a hard worker. A memorandum of review from the command’s Staff Judge Advocate, dated 8 July 1993, advised that you be discharged by reason of misconduct due to civilian conviction and further advised that there was “insufficient evidence to base the discharge on commission of a serious offense.” The separation authority approved your separation, and you were discharged with an Other Than Honorable (OTH) characterization discharged, on 12 July 1993, based on your civilian conviction.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and to change your narrative reason for separation to “Secretarial Authority.” You contend that your discharge is unjust in light of your post-service behavior and accomplishments, which you believe improperly stigmatizes you. In support of those contentions, you submitted numerous character letters as evidence that you have the strong support of your family, friends, and coworkers, to include veteran service members, regarding their favorable opinion of your post-service character. You also appear to allege error in your counsel’s legal brief with respect to an assertion that the SJA memorandum had advised to rely upon the basis of civilian conviction due to insufficient evidence of commission of a serious offense but annotated that “The Applicant’s OMPF does not contain any records with regards to the conviction that led to his discharge.” For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely discrediting effect your conviction had on the Marine Corps. Additionally, the Board noted, contrary to your counsel’s assertion of a lack of records in your OMPF pertaining to your civilian conviction, that your service records contain a record of the Judgment and Commitment issued by the ██████████, file number 92 CRS 1165, incident to your felony conviction and sentencing for second degree murder. Therefore, in light of the nature and severity of your civilian conviction, additional documentation in your service records which indicate that this premeditated murder was the second shooting incident you had been involved in within a year’s timeframe, and your earlier NJP for a violent assault upon another service member, the Board found the evidence of your post-discharge character and behavior insufficient to outweigh the severity of the criminal conduct for which you were discharged.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity is attached to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/10/2024

